(2) Whenever, in the course of an inquiry, trial or other proceeding under this Code before any magistrate other than a district magistrate or presidency magistrate, it apears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such magistrate shall apply to the district magistrate stating the reasons for the application; and the district magistrate may either issue a commission in the manner hereinafter provided or reject the application.

504. *Commission to whom to be issued.*—(1) If the witness is within the territories to which this Code extends, the commission shall be directed to the district magistrate or chief presidency magistrate, as the case may be, within the local limits of whose jurisdiction the witness is to be found.

(2) If the witness is in India, but in an area to which this Code does not extend, the commission shall be directed to such court or officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) If the witness is in a country or place outside India and arrangements have been made by the Central Government with the Government of such country or place for taking the evidence of witnesses in relation to criminal matters, the commission shall be issued in such form, directed to such court or officer, and sent to such authority for transmission, as the Central Government may, by notification in the Official Gazette, prescribe in this behalf.

505. *Execution of commissions.*(1) Upon receipt of the commission, the district magistrate, or such magistrate of the first class as he may appoint in this behalf, shall proceed to the place where the witness is, or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant cases under this Code.

(2) Upon receipt of the commission, the chief presidency magistrate, or such presidency magistrate subordinate to him as he may appoint in this behalf, may compel the attendance of, and examine, the witness as if he were a witness in a case pending before himself.

506. *Parties may examine witnesses.*—(1) The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the court or magistrate directing the commission may think relevant to the issue, and it shall be lawful for the magistrate, court or officer to whom the commission is directed, or to whom the duty of executing it is delegated, to examine the witness upon such interrogatories.

(2) Any such party may appear before such magistrate, court or officer by pleader, or if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness."

507. *Return of commission:*—(1) After any commission issued under Section 503 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the court or magistrate issuing the commission; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

(2) Any deposition so taken, if it satisfies the conditions prescribed by Section 33 of the Indian Evidence Act, 1872 (I of 1872), may also be received in evidence at any subsequent stage of the case before another court.

508. *Adjournment of proceeding:*—In every case in which a commission is issued under section 503, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

508A. *Execution of foreign commissions:*—(1) The provisions of Section 505 and so much of Section 506 and Section 507 as relates to the execution of a commission and its return shall apply in respect of commissions issued by any of the courts, judges or magistrates hereinafter mentioned as they apply to commissions issued under Section 503.

(2) The courts, judges and magistrates referred to in sub-section (1) are—

"(a) any such court, judge or magistrate exercising jurisdiction within an area in India to which this Code does not extend, as the Central Government may, by notification in the Official Gazette, specify in this behalf; and

(b) any court, judge or magistrate exercising jurisdiction in any such country or place outside India as the Central Government may, by notification in the Official Gazette, specify in this behalf, and having authority, under the law in force in that country or place, to issue commissions for the examination of witnesses in relation to criminal matters."

22. ***Amendment of Section 554 Act V of 1898***:—In sub-section (1) of Section 554 of the said Code, for the words and letter 'for a Part A State", the words and letters "for a Part A State or a Part B State" shall be substituted.

23. ***Amendment of Section 558, Act V of 1898***:—In section 558 of the said Code, after the words and letter "Part A State" the words and letter "or a Part B State" shall be substituted.

24. ***Amendment of Schedule II, Act V of 1898***:—In Schedule II to the said Code, under the heading "Offences against other laws," in the fifth column relating to the second item, after the words "Except in cases" the words "not relating to fire-arms" shall be inserted.

25. *Repeals and savings*:—(1) If immediately before the day on which this Act comes into force in a Part B State there is in force in that State any law which corresponds to the said Code, such corresponding law shall on that day stand repealed but not so as to restore any jurisdiction or form of procedure not then existing or followed or to render unlawful the continuance of any confinement which is then lawful.

(2) All notifications published, proclamations issued, powers conferred, forms prescribed, local limits defined, sentences passed and orders, rules and appointments made, under any corresponding law hereby repealed shall be deemed to have been respectively published, issued, conferred, prescribed, defined passed and made under the corresponding provision of the said Code.

(3) The provisions of the said Code shall apply to all proceedings instituted after the coming into force of the said Code in any Part B State and, so far as may be, to all cases pending in any criminal court in that State when the said Code comes into force therein.

(4) Where under any law in force in a Part B State immediately before the commencement of this Act, a sessions judge has been empowered to exercise all or any of the powers of a district magistrate, then, notwithstanding anything contained in sub-section (1), that law shall, in so far as it purports to confer such powers on any such sessions judge, continue to have effect as if enacted in the said Code, and nothing in the said Code shall be deemed to transfer to any district magistrate in that State any of the powers so exercisable by a sessions judge.

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THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 1951.

(II OF 1951).

AN

ACT

further to amend the Code of Civil Procedure, 1908.

BE it enacted by Parliament as follows:—

1. ***Short title and commencement.***—(*1*) This Act may be called the Code of Civil Procedure (Amendment) Act, 1951.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. ***Amendment of section 1, Act V of 1908.***—For sub-section (*3*) of section 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as the said Code), the following shall be substituted, namely:—

"(*3*) It extends to the whole of India except—

(*a*) the Tribal Areas in the State of Assam;

(*b*) save as hereinafter provided the Scheduled Areas in the State of Madras;

(*c*) the State of Jammu and Kashmir; and

(*d*) the State of Manipur:

Provided that sections 36 to 43 and Order XXXIV in the First Schedule shall extend also to the Amindivi Islands and the East Godavari, West Godavari and Visakhapatnam Agencies in the State of Madras, and section 48 shall extend also to the said Agencies".

3. ***Substitution of "India" for "the States" in Act V of 1908.***—In the said Code, unless otherwise expressly provided, for the words "the States", wherever they occur, the word "India" shall be substituted.

4. ***Amendment of section 2, Act V of 1908.***—In section 2 of the said Code,—

(i) for clause (*5*), the following clause shall be substituted, namely:—

'(*5*) "foreign court" means a court situate outside India and not established or continued by the authority of the Central Government;';

(ii) after clause (*7*), the following clauses shall be inserted namely:—

'(*7A*) "High Court", in relation to the Andaman and Nicobar Islands, means the High Court in Calcutta;

(*7B*) "India", except in sections 1, 29, 43, 44, 78, 79, 82, 83 and 87A, means the territory of India excluding the State of Jammu and Kashmir;';

(iii) Clause (21) shall be omitted.

5. ***Amendment of section 7, Act V of 1908.***—In section 7 of the said Code, after the words "said Act or law" the words "or to courts in Part B States exercising a corresponding jurisdiction" shall be inserted.

6. ***Substitution of new section for section 29, Act V of 1908.***—For section 29 of the said Code, the following section shall be substituted, namely:—

"29. ***Service of foreign summonses.***—Summonses and other processes issued by—

(*a*) any civil or revenue court established in any part of India to which the provisions of this Code do not extend, or

(*b*) any civil or revenue court established or continued by the authority of the Central Government outside India, or

(*c*) any other civil or revenue court outside India to which the Central Government has, by notification in the Official Gazette, declared the provisions of this section to apply,

may be sent to the courts in the territories to which this Code extends, and served as if they were summonses issued by such courts."

7. ***Amendment of section 35A Act V of 1908.***—In the first proviso to sub-section (*2*) of section 35A of the said Code,—

(i) after the figures "1887", the words and letter "or under a corresponding law in force in a Part B State" shall be inserted; and

(ii) for the words "under that Act" the words "under such Act or law" shall be substituted.

8. ***Substitution of new section for section 43, Act V of 1908.***—For section 43 of the said Code, the following section shall be substituted, namely:—

"43. ***Execution of decrees passed by civil courts in places to which this Code does not extend.***—Any decree passed by any civil court established in any part of India to which the provisions of this Code do not extend, or by any court established or continued by the authority of the Central Government outside India, may, if it cannot be executed within the jurisdiction of the court by which it was passed, be executed in the manner herein provided within the jurisdiction of any court in the territories to which this Code extends."

9. ***Substitution of new section for section 44, Act V of 1908***—For section 44 of the said Code, the following section shall be substituted, namely:—

"44. ***Execution of decrees passed by revenue courts in places to which this Code does not extend.***—The State Government may, by notification in the Official Gazette, declare that the decrees of any revenue court in any part of India to which the provisions of this Code do not extend, or any class of such decrees, may be executed in the State as if they had been passed by courts in that State.";

10. *Amendment of section 60, Act V of 1908.*—In clause (*j*) of section 60 of the Code, for the words and figures "the Indian Army Act, 1911, or the Burma Army Act", the words and figures "the Army Act, 1950" shall be substituted.

11. *Substitution of new section for section 78, Act V of 1908.*—For section 78 of the said Code, the following section shall be substituted, namely:—

"78. *Commissions issued by foreign courts.*—Subject to such conditions and limitations as may be prescribed, the provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by or at the instance of—

(*a*) courts situate in any part of India to which the provisions of this Code do not extend; or

(*b*) courts established or continued by the authority of the Central Government outside India; or

(*c*) courts of any State or country outside India."

12. *Substitution of new sections 83 to 87B for Sections 83 to 87, Act V of 1908.*—For the heading above section 83, and for sections 83 to 87, inclusive, of the said Code, the following shall be substituted, namely:—

"SUITS BY ALIENS AND BY OR AGAINST FOREIGN RULERS, AMBASSADORS AND ENVOYS.

83. *When aliens may sue.*—Alien enemies residing in India with the permission of the Central Government, and alien friends, may sue in any court otherwise competent to try the suit, as if they were citizens of India, but alien enemies residing in India without such permission, or residing in a foreign country, shall not sue in any such court.

Explanation.—Every person residing in a foreign country, the Government of which is at war with India and carrying on business in that country without a licence in that behalf granted by the Central Government, shall, for the purpose of this section, be deemed to be an alien enemy residing in a foreign country.

84. *When foreign States may sue.*—A foreign State may sue in any competent court:

Provided that the object of the suit is to enforce a private right vested in the Ruler of such State or in any officer of such State in his public capacity.

85. *Persons specially appointed by Government to prosecute or defend on behalf of foreign Rulers.*—(1) The Central Government may, at the request of the Ruler of a foreign State or at the request of any person competent in the opinion of the Central Government to act on behalf of such Ruler, by order, appoint any persons to prosecute or defend any suit on behalf of such Ruler, and any persons so appointed

shall be deemed to be the recognised agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Ruler.

(2) An appointment under this section may be made for the purpose of a specified suit or of several specified suits or for the purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of such Ruler.

(3) A person appointed under this section may authorise or appoint any other persons to make appearances and applications and do acts in any such suit or suits as if he were himself a party thereto.

86. *Suits against foreign Rulers, Ambassadors and Envoys.*—(1) No Ruler of a foreign State may be sued in any court otherwise competent to try the suit except with the consent of the Central Government certified in writing by a Secretary to that Government:

Provided that a person may, as a tenant of immovable property, sue without such consent as aforesaid a Ruler from whom he holds or claims to hold the property.

(2) Such consent may be given with respect to a specified suit or to several specified suits or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the court in which the Ruler may be sued, but it shall not be given, unless it appears to the Central Government that the Ruler—

(*a*) has instituted a suit in the court against the person desiring to sue him, or

(*b*) by himself or another, trades within the local limits of the jurisdiction of the court, or

(*c*) is in possession of immovable property situate within those limits and is to be sued with reference to such property or for money charged thereon, or

(*d*) has expressly or impliedly waived the privilege accorded to him by this section.

(3) No Ruler of a foreign State shall be arrested under this Code and, except with the consent of the Central Government certified in writing by a Secretary to that Government no decree shall be executed against the property of any such Ruler.

(4) The preceding provisions of this section shall apply in relation to—

(*a*) any Ambassador or Envoy of a foreign State;

(*b*) any High Commissioner of a Commonwealth country, and

(*c*) any such member of the staff or retinue of the Ruler, Ambassador or Envoy of a foreign State or of the High Commissioner of a Commonwealth country as the Central Government may, by general or special order, specify in this behalf,

as they apply in relation to the Ruler of a foreign State.

87. *Style of foreign Rulers as parties to suits.*—The Ruler of a foreign State may sue, and shall be sued, in the name of his State:

Provided that in giving the consent referred to in section 86, the Central Government may direct that the Ruler may be sued in the name of an agent or in any other name.

87A. *Definitions of "foreign State" and "Ruler"* - (1) In this Part.—

(*a*) "foreign State" means any State outside India which has been recognised by the Central Government; and

(*b*) "Ruler", in relation to a foreign State, means the person who is for the time being recognised by the Central Government to be the head of that State.

(2) Every court seall take judicial notice of the fact—

(*a*) that a State has or has not been recognised by the Central Government;

(*b*) that a person has or has not been recognised by the Central Government to be the head of a State.

SUITS AGAINST RULERS OF FORMER INDIAN STATES.

87B. *Application of sections* 85 *and* 86 *to Rulers of former Indian States.*—(1) The provisions of section 85 and of sub-sections (1) and (3) of section 86 shall apply in relation to the Rulers of any former Indian State as they apply in relation to the Ruler of a foreign State.

(2) In this section—

(*a*) "former Indian State" means any such Indian State as the Central Government may, by notification in the Official Gazette, specify for the purposes of this Section; and

(*b*) "Ruler", in relation to a former Indian State, means the person who, for the time being, is recognised by the President as the Ruler of that State for the purposes of the Constitution."

13. *Amendment of Section 92, Act V of 1908.*—In sub-section (2) of Section 92 of the said Code, after the figures "1863" the words "or by any corresponding law in force in a Part B State" shall be inserted.

14. *Amendment of heading of Part IX and of Section 116, Act V of 1908.*—In the heading of Part IX of the said Code, for the words "CHARTERED HIGH COURTS" the words and letters "HIGH COURTS FOR PART A STATES AND PART B STATES" shall be substituted, and in Section 116 of the said Code, after the words and letter "Part A States" the words and letter "and Part B States" shall be inserted.

15. *Amendment of Section 122, Act V of 1908.*—In Section 122 of the said Code, after the words and letter "Part A States" the words and letter "and Part B States" shall be inserted.

16. *Amendment of Section 123, Act V of 1908.*—In sub-section (2) of Section 123 of the said Code.—

(i) for clauses (*b*) and (*c*), the following clause shall be substituted, namely :—

"(*b*) two legal practitioners enrolled in that Court", and

(ii) clauses (*d*) and (*e*) shall be re-lettered as clauses (*c*) and (*d*) respectively.

17. *Amendment of Section 129, Act V of 1908.*—In Section 129 of the said Code, after the words and letter "Part A State", the words and letter "or a Part B State" shall be inserted, and after the words "Letters Patent or order", the words "or other law" shall be inserted.

18. *Amendment of Order L, Act V of 1908.*—In rule 1 of Order L of the First Schedule to the said Code, after the words "said Act or law" the words and letter "or to courts in Part B States exercising a corresponding jurisdiction" shall be inserted.

19. *Special provisions explaining operatin of Act IX of 1922.*—Notwithstanding anything contained in sub-section (2) of Section 1 of the Civil Procedure (Amendment) Act, 1922 (IX of 1922), but without prejudice to any action taken thereunder by any Provincial Government or State Government before the date referred to in sub-section (2) of Section 1 of this Act, the amendments made in the said Code by Sections 2, 3 and 4 of the said Act shall, with effect from that date, become operative throughout the territories to which the said Code will then extend.

20. *Repeals and savings.*—(1) If, immediately before the date on which the said Code comes into force in any Part B State, there is in force in that State any law corresponding to the said Code, that law shall on that date stand repealed :

Provided that the repeal shall not affect—

(*a*) the previous operation of any law so repealed or anything duly done or suffered thereunder, or

(*b*) any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed, or

(*c*) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid.

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.

(2) Subject to the provisions contained in sub-section (1), notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed, forms framed, appointments made and powers conferred under any enactment hereby repealed shall, so far as they are consistent with the said Code, have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed and conferred under the said Code and by the authority empowered thereby in such behalf.

(3) In every law or notification passed or issued before the commencement of this Act in which reference is made to or to any Chapter or Section of any law hereby repealed, such reference shall, so far as may be practicable, be taken to be made to the said Code or its corresponding Part, Order, Section or rule.

LD. (b) 1-764/51/Law.

NOTIFICATION.

The Supreme Court Advocates (Practice in High Courts) Bill 1950 which has been introduced in the Parliament of India on the 28th February 1951 is republished for general information.

By order of His Higess
the Raj Pramul

Government Secretariat,
Law Department,
Trivandrum, 3rd March 1951.

N. S. RADHAKRISHNAARMA,
Secretary to Goverent,

THE SUPREME COURT ADVOCATES (PRACTICE IN HIGH COURTS) BILL, 1951.

(As introduced in Parliament.)

A Bill to authorise advocates of the Supreme Court to prac as of right in any High Court;

Be it enacted by Parliament as follows:—

1. Short title and extent.—(1) This Act may be called Supreme Court Advocates (Practice in High Courts) Act, 1951.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Right of Supreme Court Advocates to practice in any High Court— Notwithstanding anything contained in the Indian Bar Cou Act, 1926 (XXXVIII of 1926), or in any other law regulating the conons subject to which a person not entered in the roll of Advocates of a H Court may be permitted to practise in that High Court, every Advocate he Supreme Court shall be entitled as of right to practise in any High C whether or not he is an Advocate of that High Court:

Provided that nothing in this section shall be deemed entitle any person, merely by reason of his being an Advocate of the Seme Court,—

(a) to plead or to act in any High Court in the ercise of its original jurisdiction; or

(b) to practise in a High Court of which he was at time a Judge, it he had given an undertaking not to prac therein after ceasing to hold office as such Judge.

Explanation.—In this section, "High Court" includhe Court of a Judicial Commissioner.

STATEMENT OF OBJECTS AND REASO.

With the establishment of the Supreme Court, thehas arisen the need for the constitution of a united Bar for the whole of ia. It is proposed that as a first step in this direction, all Advocate the Supreme Court should be entitled as of right to practise, that is, pl as well as act, in any High Court, including a Judicial Commisr's Court. The Supreme Court Rules provide inter alia that a person mhave been enrolled as an Advocate of a High Court for at least seven y before he could be enrolled as an Advocate of the Supreme Court. ile ordinarily the

practice as an Advocate of the Supreme Court would be confined to that Court and to his own High Court, there might well be occasions for him to appear before other High Courts. The rules of the various High Courts on the matter are not uniform. The present Bill is intended to achieve such uniformity by providing that every Advocate of the Supreme Court shall be entitled to practise as of right in any High Court otherwise than on its original side.

New Delhi, 4th February 1951. B. R. AMBEDKAR.